

Circuit Court for Baltimore City
Case No. 101068048 & 101164003

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2728

September Term, 2016

JOHN FISHBACK

v.

STATE OF MARYLAND

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 8, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2001, John Fishback,¹ appellant, appeared in the Circuit Court for Baltimore City and entered guilty pleas to two counts of attempted first-degree murder and one count of using a handgun in the commission of a crime of violence. He was sentenced to a total term of sixty years' imprisonment, with all but thirty years suspended, and to a five-year term of supervised probation upon release. He did not seek leave to appeal. His subsequent requests for post-conviction relief were unsuccessful.

In 2016, Fishback filed a motion to correct an illegal sentence pursuant to Md. Rule 4-345(a) in which he attacked the validity of his guilty pleas based on the trial court's failure to consider his competency to stand trial, the fact that he had initially entered a plea of not criminally responsible by reason of insanity, that his defense counsel had not had him evaluated by a psychiatrist, that he had serious mental health problems, and that he had twice attempted suicide while awaiting trial. The circuit court denied the motion, noting that the issues raised "pertain to post-conviction type issues as opposed to the legality of the sentence." Fishback appeals that decision. He maintains that the circuit court erred in denying his motion to correct his sentence, and also erred in ruling without the benefit of a hearing. We affirm.

Relief under Rule 4-345(a) is limited; it applies only to situations "in which the illegality inheres in the sentence itself; *i.e.*, there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and

¹ The record before us indicates that Mr. Fishback's full name is John William Fishback, III.

substantively unlawful.” *Chaney v. State*, 397 Md. 460, 466 (2007). Neither scenario applies here.

Fishback is indirectly attacking his sentence by challenging the validity of his guilty pleas, which is an improper use of a Rule 4-345(a) motion. As the Court of Appeals has recently reiterated, a “motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case.” *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *Wilkins v. State*, 393 Md. 269, 273 (2006)).

As for Fishback’s assertion that the circuit court erred in denying his motion without first holding a hearing, Rule 4-345 does not require a hearing before such a motion may be denied.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**